

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

PEGGY BIRD,)	
)	
Plaintiff,)	
)	No. 1:06-CV-151 CAS
v.)	
)	
FRED A. GROVES MOTOR COMPANY,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on review of the file. Plaintiff filed her First Amended Complaint on January 4, 2007. As a result, pending motions pertaining to the original complaint should be denied as moot, see Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002), without prejudice to the filing of motions concerning the amended complaint.


Although defendant filed motions to strike and to dismiss raising defenses to plaintiff's original complaint as permitted by Rules 12(b) and (f), Federal Rules of Civil Procedure, neither motion is a "responsive pleading" as contemplated by Rule 15(a). See Winfrey v. Brewer, 570 F.2d 761, 764 n.4 (8th Cir. 1978) (motion to dismiss is not a responsive pleading; explaining Rule 15(a)); Taj Mahal Enters., Ltd. v. Trump, 745 F. Supp. 240, 245 (D.N.J. 1990) (motion to strike is not a responsive pleading); see also Fed R. Civ. P. 7 (identifying which papers are "pleadings" under the Federal Rules of Civil Procedure and distinguishing "pleadings" from "motions and other papers"); 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1483 (2d ed. 1987).

Because a responsive pleading to plaintiff's complaint has not yet been filed or served, plaintiff is permitted to file her First Amended Complaint as a matter of course. Leave of Court or the consent of the defendant is not required. Fed. R. Civ. P. 15(a).

Accordingly,

IT IS HEREBY ORDERED that defendant's motion to dismiss the original complaint is **DENIED as moot** without prejudice. [Doc. 4]

IT IS FURTHER ORDERED that defendant's motion to strike with respect to the original complaint is **DENIED as moot**, without prejudice. [Doc. 6]


CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 5th day of January, 2007.